



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

AUG 08 2012

Mr. Jay Sakai, Director
Water Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: Specific Objection to Prince George's County Phase I Municipal Separate Storm Sewer System (MS4) Permit MD0068284

Dear Mr. Sakai:

On May 18, 2012, the U. S. Environmental Protection Agency (EPA or the Agency), received the latest draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Prince George's County permit) which was reviewed pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between MDE and EPA Region III (May 22, 1989).

On June 14, 2012, EPA sent written comments and a marked-up version of the Prince George's County permit to the Maryland Department of the Environment (MDE) requesting that changes be made to the draft permit. On June 15, 2012 EPA issued a time extension letter to increase our review time to 90 days, since we had reason to believe that the comments would not be addressed within the initial 30 day review period. EPA and MDE are currently in productive discussions on these issues. Since these discussions are ongoing and the 90-day review period will expire on August 16, 2012, EPA is issuing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A of the MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Prince George's County permit.

EPA's objection to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:

1. Water Quality Standards

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. § 122.44(d)(1)(i). Part VI of the draft Prince George's County permit (Enforcement and Penalties) contains general language

related to “minimizing” and “preventing to the MEP” contamination or physical alteration of waters of the state; however, it does not actually prohibit water quality exceedances. Please refer to EPA’s suggested language in our comments of June 14, 2012 and also consider the recommendation made therein that the language be contained in the first part of the permit and not placed in a later section that would get lost among standard conditions and boilerplate language.

MDE may also wish to refer to the 2011 previously approved Frederick County permit (p.7), which contains the following provision: “Frederick County shall annually provide watershed assessments, watershed implementation plans, opportunities for public participation, and TMDL compliance status *as required below to ensure that water quality standards are met for all water bodies in the County.*” (emphasis added) The italicized language, which was omitted from the Prince George’s County permit, would be appropriate to ensure attainment of water quality standards as well as consistency with federal regulations.

In order to resolve this portion of our objection, MDE must add the language recommended by EPA via the enclosed marked-up permit, the Frederick County language listed above, or similar acceptable language.

2. Anacostia Trash Total Maximum Daily Load (TMDLs)

EPA was pleased that the draft Prince George’s County permit includes requirements for trash and litter reductions at Part III.D.4. However, the permit fails to include specific requirements related to the Anacostia River and its associated Trash TMDL, which includes a wasteload allocation (WLA) for Prince George’s County. As noted above, federal regulations require that all NPDES permits contain limitations to control pollutants which will cause an excursion above any water quality standard. They also require that effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, be consistent with the assumptions and requirements of any available applicable WLA(s) for the discharge developed under approved TMDLs. 40 C.F.R. § 122.44(d).

EPA provided language to MDE on June 14, 2012 to include in this section of the permit in accordance with the terms and conditions listed in the Anacostia TMDL. In order to resolve this portion of our objection, MDE must revise the permit to include EPA’s recommended language, or similar acceptable language.

3. Chesapeake Bay TMDL

In 2010, EPA issued a document entitled “Urban Stormwater Approach for the Mid-Atlantic Region and the Chesapeake Bay Watershed” (herein after “Urban Stormwater Approach”; available at:

http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/MS4GuideR3final07_29_10.pdf), which outlines the standards that permitting authorities within Region III are expected to adopt to ensure that MS4 permits will contribute to meeting the water quality objectives of the

Clean Water Act, including relevant WLAs. One such expectation is that “[p]ermits implementing Chesapeake Bay watershed WLAs should also include specific two year milestones, and the reporting requirements to determine if these milestones are being met.” The Prince George’s County draft permit does not contain sufficient requirements for Chesapeake Bay milestones and related reporting requirements. The section of the Prince George’s County permit that relates to the Chesapeake Bay (Part V.A) provides background and generalities about the NPDES program related to the Chesapeake Bay TMDL; however, it fails to explicitly state what steps the permittee must actually take to comply with the TMDL.

EPA’s permit review has concluded that although the 20% restoration strategy in the Prince George’s County draft permit does present a Bay milestone (and apparently constitutes partial compliance with Maryland’s Watershed Implementation Plan), it is not adequately expressed in the draft permit. EPA included recommended language in our marked-up permit at Part VI.A that would clearly state that by requiring a 20% reduction, compliance with the TMDL can be reasonably achieved for this permit term.

In order to resolve this portion of our objection, the permit shall be revised to include the recommended provision.

4. Backsliding

Backsliding is prohibited in NPDES permits. *See* Section 402(o) of the CWA, 33 U.S.C. § 1342(o) (“[A] permit may not be renewed, reissued, or modified on the basis of effluent guidelines...subsequent to the original issuance of such a permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit...”). *See also* 40 C.F.R. § 122.44(l). Allowing additional time to complete a task that was required by the previous permit constitutes a less stringent condition and violates the prohibition against anti-backsliding.

The draft Prince George’s County permit contains a number of provisions which violate this principle. For example, the draft permit requires the permittee to, *inter alia*: (1) establish or implement a management program in areas served by the County’s MS4 (Part III.D.1-3, at pp. 2-4); and (2) establish and publicize a compliance hotline for the public reporting of suspected illicit discharges (Part III.D.6.a). These same requirements are contained in Prince George’s current permit. Prince George’s County cannot be allowed an additional permit term to complete tasks that were required under the previous permit.

In order to resolve this portion of our objection, MDE must revise the draft permit to include new and updated permit requirements that will expand upon the tasks required by the current permit. For example, instead of requiring that a hotline be established as was required by the previous permit, this permit should include a provision to track the amount of calls received and actions taken in response to those calls. EPA’s marked permit and comments to MDE reflected proposed language that would be acceptable to resolve this concern.

5. Industrial / Commercial Monitoring

Part III.C of the draft Prince George's County permit requires source identification of pollutants in certain categories of stormwater runoff County-wide. However, this requirement is insufficient because the draft permit does not specifically include the category of industrial and commercial sources. An inventory of industrial and commercial sites which could contribute pollutants to receiving waters is integral to compliance with the requirement under federal regulations that stormwater management programs for a description of "[d]escribe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C)..." 40 C.F.R. § 122.26 (d)(2)(iv)(C)(2).

EPA provided recommended language in Part IV.C, Part IV.D.3.b, and Part V.A.2 of the marked-up permit that was submitted to MDE. In order to resolve this portion of our objection, MDE must revise the permit in accordance with those recommendations.

EPA also suggests the following recommendations for inclusion in the County's permit.

1. Education

In Part IV.D.1 of the EPA marked-up permit (Management Programs), EPA recommended adding an additional section for staff training that includes requirements for new technology, implementing pollution prevention, good housekeeping, inspections and permit requirements. EPA believes this will improve employee efficiency and awareness during inspections while ensuring continued and thorough maintenance of the stormwater program.

2. Maximum Extent Practicable

Throughout EPA's permit mark up, we requested removing the use of the phrase "maximum extent practicable" or "MEP". EPA has a number of concerns about inclusion of this language: it is imprecise in its interpretation and thus makes enforcing the permit terms more difficult; it could lead to backsliding; and it rightfully is a determination to be made by the permitting authority in the permit's terms. All references to MEP, with the exception of the requirement that the permittee develop and implement the "Stormwater Management Act of 2007 and Environmental Site Design to the MEP" should be modified.

EPA looks forward to working cooperatively with MDE to resolve the remaining issues in an expeditious manner. Until the issues are resolved, however, in accordance with 40 C.F.R. §122.4(c), MDE may not issue the Prince George's County MS4 permit without written authorization from EPA.

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon M. Capacasa", with a long horizontal flourish extending to the right.

Jon M. Capacasa, Director
Water Protection Division

cc: Brian Clevenger, MDE
Samuel Wynkoop, Jr., Prince George's County